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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

CISCO SYSTEMS, INC.,
 Plaintiff,
 v.
 CAPELLA PHOTONICS, INC.,
 Defendant.

 CAPELLA PHOTONICS, INC.,
 Counterclaimant,
 v.
 CISCO SYSTEMS, INC.,
 Counter-Defendant.

Case No. 3:20-cv-01858-EMC

**JOINT CLAIM CONSTRUCTION AND
 PREHEARING STATEMENT (PATENT
 LOCAL RULE 4-3)**

Hon. Edward M. Chen

Pursuant to Patent Local Rule 4-3 and the Court's Order Setting Claims Construction Deadlines (Dkt. 37), defendant and counterclaimant Capella Photonics, Inc. ("Capella") and plaintiff and counterclaim-defendant Cisco Systems, Inc. ("Cisco") hereby submit this Joint Claim Construction and Prehearing Statement concerning U.S. Patent No. RE47,905 ("the '905 patent") and U.S. Patent No. RE47,906 ("the '906 patent").

I. Patent Local Rule 4-3(a): Construction of Terms On Which The Parties Agree

Capella and Cisco (collectively the "parties") have not reached agreement on the construction of any claim terms appearing in the '905 and/or '906 patents.

II. Patent Local Rule 4-3(b): Proposed Constructions Of Disputed Terms

Capella and Cisco's proposed construction of each disputed claim term, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses, is provided in **Appendix A.**

III. Patent Local Rule 4-3(c): Identification of Most Significant Terms

The parties identify the following claim terms whose construction will be the most significant to the resolution of the above-captioned action. Items one (1) through five (5) all relate to disputes regarding claim amendments between the previously asserted patents ('368 patent and '678 patent) and the presently asserted reissue patents ('905 patent and '906 patent). The parties have chosen to present these terms differently (Capella proposing to construe just term no. one (1), and Cisco proposing term nos. two (2) through five (5)). Because the phrases to be construed in term no. one (1) are fully redundant of the other proposed claim terms for construction (*see* term nos. two (2) and four (4)), the list of terms present only ten disputes.

No.	Claim Term	Claims
1.	“port(s)”/“fiber collimators... providing ... port(s)”	’905 Patent, Claims 1, 15, 16; ’906 Patent, Claims 1, 21, 31, 37, 44, 61;
2.	“port(s)”	’368 Patent, Claims 1, 5, 6, 10, 15, 16; ’678 Patent, Claims 1-3, 5, 20-22, 24, 31, 37-39, 44-47, 55, 60-63; ’905 Patent, Claims 23, 28, 39, 45, 47, 49, 51; ’906 Patent, Claims 100, 115, 116-118, 133;
3.	“fiber collimator port(s)”/“fiber collimator . . . port(s)” ¹	’905 Patent, Claims 23, 27, 32, 39; ’906 Patent, Claims 68-70, 72, 80, 87, 89, 90, 92, 100, 115, 118, 126, 131, 133;
4.	“fiber collimator(s), providing . . . port(s)”	’678 Patent, Claims 1, 21, 31, 44, 55;
5.	“fiber collimator(s), providing and serving as...port(s)”/“fiber collimator(s) serving as...port(s)”	’905 Patent, Claims 23, 47, 49, 51 ’906 Patent, Claims 68, 100, 115, 126
6.	“continuously controllable”/“controlling... continuously”/“continuously controlling”	’905 Patent, Claims 23, 47, 49, 51, 52; ’906 Patent, Claims 68, 100, 115, 133;
7.	“beam-deflecting elements”	’905 Patent, Claims 23-25, 27-28, 31, 35, 46, 47, 49, 51-54; ’906 Patent, Claims 133-134, 139;

¹ Ellipses refers to “fiber collimator input port(s),” “fiber collimator add port,” “fiber collimator drop port,” “fiber collimator other port(s),” “fiber collimator one or more other ports,” and “fiber collimator output port.”

8.	“micromirror(s)”	’905 Patent, Claim 46; ’906 Patent, Claims 68-70, 79, 82, 85, 89-90, 96, 100, 115-117, 122-123, 125-127, 129;
9.	“controllable in two dimensions”/ “controlling...in two dimensions”	’905 Patent, Claims 23, 47, 49, 51; ’906 Patent, Claim 133;
10.	“being pivotal about two axes”	’906 Patent, Claims 68, 115;
11.	“controlling dynamically”/ “dynamically... controlling”	’905 Patent, Claims 51, 52; ’906 Patent, Claim 133;

Capella does not believe that any construction will be case or claim dispositive.

Cisco identifies the following claims terms as dispositive on the issues of collateral estoppel pursuant to the Court’s prior orders (Dkt. 48, 81). In accordance, based on construction of these claim terms either collateral estoppel will apply, or Capella will be precluded from pursuing pre-issuance damages.

- “port(s)”/“fiber collimators... providing ... port(s)”
- “port(s)”
- “fiber collimator port(s)”/“fiber collimator . . . port(s)”
- “fiber collimator providing . . . port(s)”
- “fiber collimator(s) providing and serving as...port(s)”/“fiber collimator(s) serving as...port(s)”

Cisco identifies the following constructions as dispositive with respect to noninfringement by all accused Cisco products for claims of the ’905 and ’906.Claim Term	Claims for Which the Term Is Dispositive
“continuously controllable”/ “controlling... continuously”/ “continuously controlling”	’905 Patent: all claims; ’906 Patent all claims except 89-92, 96-99;

Cisco identifies the following constructions as dispositive with respect to noninfringement by an entire class of accused Cisco products for claims of the ’905 and ’906.

Claim Term	Claims for Which the Term Is Dispositive
"beam-deflecting elements"	'905 Patent, Claims 23-29, 31-35, 47-54; '906 Patent, Claims 133-135, 137-139;
"micromirror(s)"	'905 Patent, Claim 46; '906 Patent, Claims 68-72, 79-85, 87-92, 96-100, 106, 115-118, 122-127, 129-132;
"controllable in two dimensions"/ "controlling...in two dimensions"	'905 Patent, Claims 23, 47, 49, 51; '906 Patent, Claim 133;
"being pivotal about two axes"	'906 Patent, Claims 68, 115;

IV. Patent Local Rule 4-3(d): Anticipated Length Of Claim Construction Hearing

Both parties anticipate that the claim construction hearing will take approximately 3 hours.

V. Patent Local Rule 4-3(e): Live Witnesses At The Claim Constriction Hearing

Neither party anticipates calling any live witnesses at the claim construction hearing.

VI. Patent Local Rule 4-3(f): Factual Findings

Neither party has identified any factual findings to be requested from the Court related to claim construction.

Dated: December 14, 2020

MANATT, PHELPS & PHILLIPS, LLP

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Robert D. Becker

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CAPELLA PHOTONICS, INC.

1 Dated: December 14, 2020

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